

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Karen Menton,) Civil Action No. 7:14-2542-JMC-KFM
Plaintiff,)
vs.) **REPORT OF MAGISTRATE JUDGE**
Nestle Frozen Food Company,)
Defendant.)

This matter is before the court on the defendant's motion to dismiss the plaintiff's first, second, and third causes of action of her original complaint. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A), and Local Civil Rule 73.02(B)(2)(g) DSC, this magistrate judge is authorized to review all pretrial matters in employment discrimination cases and submit findings and recommendations to the district court.

The plaintiff filed this action against her former employer on May 21, 2014, in the Court of Common Pleas of Cherokee County, South Carolina. The defendant removed the matter to this court on June 23, 2014. The plaintiff's original complaint alleges causes of action for gender discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended; retaliation in violation of Title VII; wrongful termination; breach of contract; and intentional infliction of emotional distress. On June 27, 2014, the defendant filed a motion to dismiss the Title VII and state law wrongful termination causes of action pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). Thereafter, on July 16, 2014, the plaintiff filed an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), which expressly allows a plaintiff to amend her complaint as of right within 21 days after service of a defendant's Rule 12(b) motion to dismiss. See Fed. R. Civ. P. 15(a)(1)(B). Accordingly, the defendant's motion to dismiss is moot as it is directed to the original complaint. See, e.g., *Hall v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW*,

No. 3:10-cv-418-RJC-DSC, 2011 WL 4014315, at *1 (W.D.N.C. June 21, 2011) ("It is well-settled that a timely filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings are to be denied as moot.") (citations omitted).

Based upon the foregoing, the defendant's motion to dismiss (doc. 6) the plaintiff's first, second, and third causes of action in the original complaint should be denied as moot.

July 17, 2014
Greenville, South Carolina

s/ Kevin F. McDonald
United States Magistrate Judge